

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GRAYLIN HALL,	§
	§ No. 457, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0001001994A
	§
Plaintiff Below-	§
Appellee.	§

Submitted: September 29, 2010

Decided: November 3, 2010

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 3rd day of November 2010, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Graylin Hall, filed an appeal from the Superior Court's June 28, 2010 order denying his third motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior

Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

(2) The record reflects that, in July 2000, a Superior Court jury found Hall guilty of Assault in the Second Degree, Burglary in the Second Degree and Possession of Burglar's Tools. Hall was sentenced as a habitual offender² to life in prison on his burglary conviction. He was sentenced to an additional 6 years at Level V on his other convictions. On direct appeal, Hall argued that the Superior Court docket sheet was insufficient to establish his status as a habitual offender. This Court disagreed and affirmed his convictions.³

(3) Hall's first postconviction motion alleged that his counsel provided ineffective assistance. The Superior Court's denial of the motion was affirmed by this Court.⁴ Hall subsequently filed a motion for correction of sentence, which the Superior Court treated as a Rule 61 motion for postconviction relief, alleging that there was insufficient evidence to support his status as a habitual offender. Again, the Superior Court's denial of the motion was affirmed by this Court.⁵

¹ Supr. Ct. R. 25(a).

² Del. Code Ann. tit. 11, §4214(b).

³ *Hall v. State*, 788 A.2d 118 (Del. 2001).

⁴ *Hall v. State*, No. 226, 2005, Steele, C.J. (Dec. 13, 2005).

⁵ *Hall v. State*, No. 113, 2006, Holland, J. (Oct. 27, 2006).

(4) In this appeal from the Superior Court's denial of his third postconviction motion, Hall again claims that there is insufficient evidence to support his status as a habitual offender. He contends that the Superior Court abused its discretion when it denied his motion on procedural grounds because he has demonstrated a colorable claim of a constitutional violation,⁶ thereby overcoming the time and procedural bars.⁷ Specifically, Hall claims, the Superior Court did not follow the procedures outlined in §4215(a) when it sentenced him as a habitual offender and the State did not demonstrate the requisite number of burglary convictions to support his status as a habitual offender under §4214(b).

(5) Hall's claim lacks both a legal and a factual basis. Hall is incorrect that §4215(a) applies to his situation. That statute applies only to persons who do not qualify for a habitual offender sentence under §4214(a). The record in this case clearly reflects that Hall was previously convicted of burglary at least 4 times, thereby qualifying him for habitual offender status under that subsection. Moreover, Hall is incorrect that he did not have a sufficient number of felonies to qualify for habitual offender status under §4214(b). This Court has ruled twice previously that Hall's habitual offender status pursuant to §4214(b) was fully supported by the evidence

⁶ Super. Ct. Crim. R. 61(i)(5).

⁷ Super. Ct. Crim. R. 61(i)(1), (2) and (4).

presented by the State at his sentencing hearing. In the absence of any evidence of clear error or an important change in circumstances, that ruling constitutes the law of the case and will not be altered.⁸

(6) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁸ *Bailey v. State*, 521 A.2d 1069, 1093 (Del. 1987).